

CLIENT ALERT

December 16, 2019

To Avoid Litigation, Business Websites Should Be Updated To Ensure Compliance With ADA Requirements

Erick C. Howard, Partner

Daniel M. Poniatowski, Associate

Lately there has been a rash of litigation surrounding requirements under the Americans with Disabilities Act of 1990 (“ADA”) to provide appropriate “auxiliary aids and services” to visually-impaired individuals accessing the websites of businesses. An example of such an aid or service is designing a website so that it can be read aloud by screen reader software. California’s Unruh Civil Rights Act, Cal. Civ. Code § 51 *et seq.*, makes violations of the ADA unlawful under California state law and, as discussed below, imposes penalties for violations beyond those of the ADA. Examples of businesses that have been sued because their websites were allegedly out of compliance with the ADA include Domino’s Pizza, Hulu, Kmart, McDonald’s, Grubhub, Hugo Boss, and CVS Pharmacy, just to name a few.

The ADA requires all “places of public accommodation” to provide equal access to disabled people; however the question of whether the website of a business qualifies as a “place of public accommodation” under the ADA has been in dispute among the federal appellate courts. Despite this, the California Court of Appeal recently decided a case in which a business website was deemed a place of public accommodation under the ADA so long as “there is a nexus between the website and access to a physical place of public accommodation,” such as the brick-and-mortar location of a business. *Thurston v. Midvale Corp.*, 39 Cal. App. 5th 634, 640-41 (2019). The court issued an injunction requiring the website to conform to voluntary Web Content Accessibility Guidelines promulgated by the World Wide Web Consortium. *Id.* at 638, 642, 644. It is noteworthy that the court specifically left open the possibility of extending the requirement in the future to websites “unconnected to a physical place of public accommodation offering only purely Internet-based services or products.” *Id.* at 644.

This means that at a minimum, California businesses that have a website referencing their physical operations should ensure that their websites provide appropriate access to visually-impaired individuals, or face the possibility of a lawsuit and an injunction requiring website redesign, paying the plaintiff’s attorney’s fees, and, under California’s Unruh Act, damages of up to three times actual damages but no less than \$4,000 per violation. However, the safest course is for all businesses to update their websites, regardless of the state where the business is located or whether the business maintains a physical operation.

You can access Web Content Accessibility Guidelines promulgated by the World Wide Web Consortium at the following link: [Web Consortium Guidelines](#). Please contact your Shartsis Friese attorney if you have further questions or concerns.